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MISS EDITH PATTEN, THE BRIDE OF GENERAL CORBIN.

Warm Encounters IN FEDERAL COURT Between the Lawyers

W. A. Kinney, of counsel for the Bishop Estate, resumed his closing argument to the Federal jury at the opening of yesterday afternoon's sitting. There was no sordid motive on the part of defendant, he contended, in the matter of the option, given as it was contrary to the advice of his agent.

The option was given in 1898 before annexation was consummated. It was felt that the request for an option promise of the opening of the harbor. Counsel said he was far from denying the erection of a naval station at Pearl Harbor. Civic pride alone made them regard it as a great thing for the islands at large and the Nation as well as for owners of adjacent property. It was considered by the Trustees of the Bishop Estate that the option at \$50 an acre for part of its land was good business in view of the improvement of the opening of the harbor would be to adjacent property. They saw their compensation in the reservation of all this land (indicating a locality on the map) fronting on the harbor. Otherwise the Trustees had no right, they would not dare, to violate their sacred trust by selling land at that place for \$50 an acre. Their only justification lay in the enhanced value of what was left, because from that they could get back more than they gave away. Mr. Kinney compared the action of the Trustees with that of a man in the Western States who gave part of his land for the site of a factory with the hope of being repaid through the enhanced value of the remainder of his property from having a factory established in the town.

The Trustees lived up to their option, but were informed that the United States would not be subject to trammels. The option therefore expired and next the United States came in and took all that land (pointing), including what was not under long leases. The hypothetical man out west would not give so much of his land for a factory as would leave nothing for himself. Now the Trustees said: "You asked for 500 acres within certain bounds, but you have taken a great deal more. You have taken so much of our property that you cannot fall back on our original offer." What was there unfair in that proposition?

Mr. Kinney spoke about the object of the Bishop Estate Trust, that of providing for the education of native Hawaiian youth. In conclusion he asked for no exaggerated verdict, no unjust verdict, but a fair and decent verdict for the full and real value of that land on the 6th of July last. They should have no prejudice and no bias, but be governed by a determination to do equal justice to both sides. He was glad the responsibility was theirs and not his. It would be impossible to please everybody, but if they satisfied their own consciences they might fear no criticism. Mr. Kinney cautioned them that it would be unlawful for them to strike an average of diverse valuations.

Judge Estee asked Mr. Dunne if he intended to take long in replying for the government, saying he wanted to know whether he should charge the jury that afternoon.

Mr. Dunne, having said he would not take up much time, proceeded. The hour was 2:45. The Federal attorney said he would not repeat his former arguments or take up everything said by opposite counsel. He described the latter's address as being replete with references to "his learned friend," as if the Government counsel were on trial, and with boasting about what he (the defendant's counsel) would have done if "his learned friend" had not resisted this and that evidence. In the latter respect the remarks were in reality a criticism of the Court that ruled out the evidence in question. Mr. Dunne commented strongly on the evasion by defendant's counsel of his exposure of the extraordinary nature of Mr. Low's testimony. After touching on Cecil Brown's "extravagant" valuation, the Federal attorney argued on

the matters of the tax returns and the option.

Mr. Kinney objected to commenting on the tax returns with reference to evidence that had been excluded by the Court.

Judge Estee stopped Mr. Dunne until the disputed question was cleared up. After reading the record he said "If Mr. Dunne is talking on evidence that was ruled out, he must stop."

Mr. Dunne—"I am not discussing testimony that was ruled out, sir."

Judge Estee—"Well, I am not saying you are, but if you are you must stop." After further words back and forth, in which Mr. Kinney spoke of "misquoting" and Mr. Dunne retorted sharply that he was quoting the exact report of proceedings, the Court read a stretch of the reporter's transcript aloud, the Court said: "Well, it doesn't seem this testimony was ruled out. The lease was ruled out, but the option was not." He asked Mr. Kinney to show the part of the record on which he based his objection.

Mr. Kinney read a little bit and Mr. Dunne answered a question from the Court, on which the latter said to the Federal attorney:

"Well, go ahead."

Mr. Kinney persisted in his objection with a further statement, concluding, "Is that fair?"

The Court replied that it was a sworn statement and told Mr. Dunne to go on.

Within two minutes Mr. Kinney was up again, hotly accusing the Federal attorney of misrepresenting his admissions during the examination of witnesses. Mr. Dunne warmly resented the imputation. The Court asked Mr. Kinney to indicate just where the Federal attorney was going wrong.

Exhaustive Charge TO THE JURY By Judge Estee

Judge Estee took just a quarter of an hour in delivering his charge to the jury trying United States vs. Bishop Estate. He concluded at 4 o'clock. Mr. Kinney wanted the Court's reasons for refusing certain requested instructions, but Judge Estee stated that he found by the statutes of this Territory that no reasons should be given and under the United States statutes the statutes of the Territory should be followed.

Mr. Dunne asked if both sides might not enter exceptions to the charge as a whole. Judge Estee had come across proceedings elsewhere that made him think the course proposed might cause trouble in a higher court.

Mr. Kinney noted exceptions to the charge with special reference to certain portions including those relative to a fair public sale and the disregarding of leases.

Mr. Dunne excepted to various portions and especially to the refusal of instructions requested by the Government.

The Court answered a question by a juror, to the effect that the jury could not make a quicent verdict—that is, by dividing the sum of diverse valuations in the jury room by twelve.

There being no agreement of the jury up to 7 o'clock, Judge Estee directed them taken to the Hawaiian hotel for the night.

Judge Estee's instructions were exhaustive and complete, and were allowed to be taken into the jury room by the jury. The Court referred first to the scope of the action, giving also a description of the land sought to be condemned, and stating that the question before the jury was, "What is the just compensation to be paid by the United States to the owners thereof?" He charged the jury not to let the circumstance of the United States being a party have any weight upon the value fixed. The jury was also warned against fixing any speculative value, but the limit must be the actual condition of the property July 6, 1901.

"The burden of proving the market value of the interest of the defendant to the lands in question is upon the plaintiffs; in other words, the claim of the plaintiff as to the amount of compensation to be awarded defendant must be proven by the plaintiff by a preponderance of the evidence."

In considering the value of Kuaahua Island, the jury was told to take into consideration the fact that it had never been used for residence purposes, and that the island is surrounded by a lagoon and the climate there is excessively hot.

The Court further instructed the jury as to the different and wide range of values placed upon the lands, and stated that it must all be considered together, and the honesty of all witnesses must be assumed until the contrary appears. Referring to the visit made to the land by the jury, the Court said: "The knowledge so acquired may be used by you in determining the weight of conflicting testimony respecting the value of the land but not otherwise."

In concluding the charge to the jury Judge Estee summed up the entire question as follows:

I have told you that the fair market value of the property as that property actually stood on July 6, 1901, should be paid for it; and in this behalf I charge you that what this property would bring at a fair public sale, where one party wants to sell and another wants to buy, may be taken as a criterion of its market value. But you must understand that compensation is to be estimated in this case by the actual rights acquired by the government, and not by the use which the government may make of these rights; and therefore, I instruct you, that the fact that this property may be desired by or necessary to the government, is not to be considered by you in fixing compensation.

I further instruct you that the actual value of this property cannot be enhanced by reason of the projected improvement for which it is taken; for this would simply be to make the government pay for an enhancement caused by its own work. And moreover, the willingness or unwillingness of the Bishop Estate to part with its property is not a proper element of value; nor can you consider what the Bishop Estate would give rather than be deprived of the property. As I have heretofore said, you will, in determining compensation, limit your attention to the market value of the property as it actually stood on July 6, 1901, and be guided solely by that.

Some evidence has been introduced by the government showing certain valuations sworn to and filed with the assessor, pursuant to the requirements of the Territorial statute in that regard. Upon this subject, I charge you that such sworn returns to the assessor are called by law admissions against interest and are competent evidence tending to show the market value of the property referred to therein at that time. You may therefore, and indeed it is your duty to consider such returns along with the other evidence in the case bearing upon the question of value of this property.

I instruct you also that the option given by the defendants to the United States for a portion only of the property now condemned, subject to existing leases held by the Honolulu Sugar Company, is to be considered by you only along with all other evidence bearing on the market value of the property condemned. Your duty is to determine by your verdict the real and true market value of the land in question on July 6, 1901, by considering all the evidence bearing on that point.

The leases referred to in the trial of this case have nothing to do with the value of the interest of the Estate of Bernice Pauahi Bishop, deceased, in this land.

The value of these leases are to be determined in the near future by this Court in another trial. You cannot settle the value of the interest of the Bishop Estate therefore in the land in question by any reference to these leases; therefore I instruct you to disregard said leases entirely, in arriving at the value of the interest of the Bishop Estate in this land.

In rendering your verdict you will assess, by itself, and as a separate item, the market value on the 6th day of July last, of any improvements that you may find from the evidence to have been on the condemned premises at that date.

I further charge you that no direct and special benefit or benefits to that portion of defendant's land not taken have been proven in this case, and you will therefore, in arriving at the market value of the portion taken, make no deduction therefrom for benefits to the part not taken.

Gentlemen of the jury, in arriving at a verdict in this case, it must be by the unanimous assent of all your members. Under the pleadings in this case, the complainant is entitled to the condemnation of the land described, and you must find a verdict in favor of the defendant for the market value of the lands so condemned; because as I have heretofore stated, under the constitution of the United States, private property cannot be taken for a public use unless just compensation is paid therefor.

I again finally instruct you that you are to be the sole judges of the facts in the case.
 ESTEE, Judge.

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